NKR Arunasalam Chettiar a/l Karuppan Chettiar v Goh Yew Jing & Ors

HIGH COURT (TAIPING) — ORIGINATING SUMMONS NO 24-207 OF 1998
ZULKEFLI J
8 JULY 1999

Land Law — *Restraints on dealings — Caveats — Extension — Pending disposal of main suit — Whether caveat to be automatically allowed to remain — Sale of land vide power of attorney alleged to be fraudulent — Inadequacy of consideration — Denial of execution of power of attorney — Vendor not implicated as privy to fraud — Delay in lodging caveat, whether contumelious — Whether purchaser obtain good title — Whether caveat to remain*

The plaintiff was the previous registered owner of certain pieces of land ('the lands'). The first defendant claimed that the plaintiff had given a power of attorney ('the PA') to one Karuppaya s/o Kannaya on 7 May 1987. Karuppaya as the purported donee of the PA sold the lands to the first defendant on 15 February 1988. The plaintiff disputed the sale of the lands to the first defendant and had caveated the lands on 6 June 1998. The plaintiff then made an application for an order that the private caveat entered by him be allowed to remain and extended until the disposal of the civil suit filed by the plaintiff against the first defendant. The plaintiff contended that: (i) the first defendant and Karuppaya had committed fraud with regard to the sale transaction of the lands; (ii) he did not at all material time give any power of attorney to Karuppaya. He did not execute the PA and he verily believed that it was forged and used fraudulently to effect transfer of the land. A specimen of his signature was enclosed to show evidence of consistency in his signature; (iii) he had already taken civil suits against parties using the forged PA. Besides the present action against the first defendant, he had also filed a main suit citing the first defendant and Karuppaya as the defendants and that the court should preserve the status quo so that the lands will not be disposed to third parties which would in fact render his main suit nugatory; and (iv) the consideration paid by the first defendant for a sum of RM15,000 for the purchase of the lands was much less than the value of the land. The first defendant submitted that: (i) he had purchased the lands for valuable consideration and had been the registered owner for the past 10 years; (ii) he verily believed that Karuppaya held a valid issue document of title and a power of attorney having found that the said PA was registered at the registry of the Ipoh High Court; (iii) he had seen a letter from an advocate and notary public stating that the PA was executed in the presence of the advocate and notary public; and (iv) the caveat lodged were defective in that the reasons given in Form 19B of the National Land Code 1965 ('the NLC') by the plaintiff did not reveal that the plaintiff had caveatable interests. The plaintiff had also not stated the nature of his claim against the defendant in accordance with the provisions of s 323(2) of the NLC.

Held, dismissing the application:

(1) There is no special provision in law that automatically permits a caveat to remain pending the disposal of the main suit. The plaintiff as the caveator must justify the continued maintenance of the caveat notwithstanding the filing of the main suit. Having studied the affidavits, the court found that the plaintiff had failed to show that he had caveatable interest on the lands. The plaintiff also had not disclosed serious questions meriting a trial (see p 209F–210D).

(2) On the evidence made available before the court, the court found that the first defendant had acted most reasonably with due caution, prudence and diligence in the purchase of the lands. The first defendant had done all that a reasonable purchaser of property would have done in the purchase of the lands. There was nothing more a reasonable purchaser could have done to ascertain the efficacy, validity or authenticity of the PA in the given circumstances (see p 210H–211A).

(3) In the absence of any cogent evidence produced by the plaintiff to challenge the validity of the PA other than a mere denial of the fact that he executed the PA, the plaintiff had failed to rebut the presumption that the PA was so executed and authenticated before the notary public by virtue of s 85 of the Evidence Act 1950 (see p 211D).

(4) The court could not determine the authenticity or otherwise of a signature by a mere comparison. This is the province of the expert evidence. There was a duty placed upon the plaintiff at this stage to produce some preliminary expert opinion to prima facie substantiate the allegation of forgery and fraud. The plaintiff had failed to do so. That being the case, the first defendant must be held to be a bona fide purchaser for value without prior notice or knowledge of the fraud as alleged by the plaintiff. Therefore, the first defendant has a good title to the lands as he had been conferred with an indefeasible title by virtue of the proviso to s 340(3) of the NLC (see p 211F–H).

(5) The fact that a person pays too much or too little for a thing does not of itself affect the validity of the contract. If the parties' consent to an agreement have been freely given, such an agreement is a contract notwithstanding the inadequacy of the consideration. In the circumstances of the present case, the court hold that the first defendant had entered into a valid contract with Karuppaya acting as the donee of the PA for the purchase of the lands notwithstanding the inadequacy of the consideration as alleged by the plaintiff (see p 212A–C).

(6) By virtue of the provision of s 340(2)(a) of the NLC, the plaintiff has to reveal in the grounds expressed in his application for the entry of the caveat that the first defendant was a party or privy to the fraud. The plaintiff did not in any way implicate the first

defendant as a party or privy to the alleged fraud. The plaintiff had failed to state the nature of his claim and to spell out the particulars of fraud against the first defendant in Form 19B of the NLC (see p 212C–D). A

(7) There had been a delay by the plaintiff in lodging the caveat and in instituting the main suit against the first defendant and the plaintiff had not explained the contumelious delay (see p 213C–D). B

[Bahasa Malaysia summary

Plaintif adalah bekas pemunya berdaftar beberapa bidang tanah ('tanah-tanah tersebut'). Defendan pertama mendakwa bahawa plaintif telah memberi surat kuasa wakil ('SKW tersebut') kepada seorang Karuppaya s/o Kannaya pada 7 Mei 1987. Karuppaya sebagai penerima SKW tersebut menjual tanah-tanah tersebut kepada defendan pertama pada 15 Februari 1988. Plaintif mempertikaikan penjualan tanah-tanah tersebut kepada defendan pertama dan memasukkan kaveat ke atas tanah-tanah tersebut pada 6 Jun 1998. Plaintif kemudiannya membuat suatu permohonan untuk perintah bahawa kaveat persendirian yang dimasukkan oleh beliau dibenarkan untuk kekal dan dilanjutkan sehingga penyelesaian kes sivil yang difailkan oleh plaintif terhadap defendan pertama. Plaintif menegaskan bahawa: (i) defendan pertama dan Karuppaya telah melakukan fraud berkenaan dengan transaksi penjualan tanah-tanah tersebut; (ii) beliau tidak pada bila-bila masa yang material memberi apa-apa surat kuasa wakil kepada Karuppaya. Beliau tidak menyempurnakan SKW tersebut dan beliau sesungguhnya percaya bahawa ia adalah dipalsukan dan digunakan secara fraud untuk melaksanakan pindahmilik tanah tersebut. Suatu spesimen tanda tangan beliau adalah dilampirkan untuk menunjukkan keterangan konsisten dalam tanda tangannya; (iii) beliau telah memulakan guaman-guaman sivil terhadap pihak-pihak yang menggunakan SKW palsu tersebut. Selain daripada tindakan ini terhadap defendan pertama, beliau telah juga memfailkan guaman utama menamakan defendan pertama dan Karuppaya sebagai defendan-defendan dan bahawa mahkamah sepatutnya mengekalkan status quo supaya tanah-tanah tersebut tidak akan dilupuskan kepada pihak-pihak ketiga yang sebenarnya akan menyebabkan guaman utama beliau tidak berguna; dan (iv) balasan yang dibayar oleh defendan pertama untuk jumlah sebanyak RM15,000 untuk pembelian tanah-tanah tersebut adalah jauh lebih kurang daripada nilai tanah tersebut. Defendan pertama menghujahkan bahawa: (i) beliau telah membeli tanah-tanah tersebut untuk balasan berharga dan telah merupakan pemunya berdaftar untuk 10 tahun yang lalu; (ii) beliau sesungguhnya percaya bahawa Karuppaya memiliki dokumen hakmilik keluaran yang sah dan surat kuasa wakil telah mendapati bahawa SKW tersebut adalah didaftarkan di pejabat pendaftaran Mahkamah Tinggi Ipoh; (iii) beliau telah melihat sepucuk surat daripada peguambela dan

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notari awam menyatakan SKW tersebut adalah disempurnakan di hadapan peguambela dan notari awam; dan (iv) kaveat yang dimasukkan adalah cacat kerana alasan-alasan yang diberikan di dalam Borang 19B Kanun Tanah Negara 1965 ('KTN') oleh plaintif tidak mendedahkan bahawa plaintif mempunyai kepentingan-kepentingan yang boleh dikaveatkan. Plaintif tidak juga menyatakan jenis tuntutan beliau terhadap defendan menurut peruntukan-peruntukan s 323(2) KTN.

Diputuskan, menolak permohonan:

(1) Tiada terdapatnya peruntukan undang-undang yang secara automatik membenarkan kaveat untuk kekal sementara menunggu penyelesaian guaman utama. Plaintif sebagai pengkaveat mesti memberikan alasan kuat untuk pengekalan berterusan kaveat tersebut walaupun guaman utama telah difailkan. Setelah meneliti afidavit-afidavit, mahkamah mendapati bahawa plaintif telah gagal untuk membuktikan bahawa beliau mempunyai kepentingan-kepentingan yang boleh dikaveatkan di atas tanah-tanah tersebut. Plaintif juga tidak mendedahkan persoalan-persoalan serius yang mewajarkan untuk perbicaraan (lihat ms 209F–210D).

(2) Berdasarkan keterangan yang ada di hadapan mahkamah, mahkamah mendapati bahawa defendan pertama telah bertindak dengan amat munasabah dengan waspada, kebijaksanaan dan ketekunan yang sewajarnya di dalam pembelian tanah-tanah tersebut. Defendan pertama telah melakukan semua yang seorang pembeli harta tanah yang munasabah akan lakukan di dalam pembelian tanah-tanah tersebut. Tiada terdapatnya apa-apa yang selebihnya seorang pembeli harta tanah yang munasabah akan lakukan untuk menentukan keberkesanan, kesahan atau ketulenan SKW tersebut di dalam keadaan-keadaan demikian (lihat ms 210H–211A).

(3) Di dalam ketiadaan keterangan yang menyakinkan yang dikemukakan oleh plaintif untuk mencabar kesahan SKW tersebut selain daripada penafian semata-mata akan fakta bahawa beliau telah menyempurnakan SKW tersebut, plaintif telah gagal mematahkan anggapan bahawa SKW tersebut adalah disempurnakan dan disahkan ketulenannya di hadapan notari awam oleh sebab s 85 Akta Keterangan 1950 (lihat ms 211D).

(4) Mahkamah tidak dapat menentukan ketulenan atau sebaliknya tanda tangan dengan bandingan semata-mata. Ini adalah di dalam lingkungan pakar keterangan. Terdapat tugas yang terletak pada plaintif pada tahap ini untuk mengemukakan pendapat awal pakar untuk prima facie mengesahkan pengataan pemalsuan dan fraud. Plaintif telah gagal berbuat demikian. Maka demikian, defendan pertama mesti diputuskan sebagai pembeli bona fide dengan balasan berharga tanpa notis atau pengetahuan terlebih dahulu

seperti yang dikatakan oleh plaintif. Justeru, defendan pertama mempunyai hakmilik yang kukuh kepada tanah-tanah tersebut memandangkan beliau telah dikurniakan dengan hakmilik tak boleh sangkal oleh sebab proviso kepada s 340(3) KTN tersebut (lihat ms 211F–H).

(5) Fakta bahawa seseorang membayar terlalu banyak atau terlalu sedikit untuk sesuatu tidak dengan sendirinya menjejaskan kesahan kontrak. Jika persetujuan pihak-pihak kepada suatu perjanjian adalah diberikan dengan rela, perjanjian sedemikian adalah suatu kontrak meskipun kekurangan balasan. Di dalam keadaan-keadaan kes ini, mahkamah mendapati bahawa defendan pertama telah memasuki kontrak sah dengan Karuppaya yang bertindak sebagai penerima SKW tersebut untuk pembelian tanah-tanah tersebut meskipun kekurangan balasan seperti yang dikatakan oleh plaintif (lihat ms 212A–C).

(6) Oleh sebab peruntukan s 340(2)(a) KTN, plaintif mesti mendedahkan alasan-alasan di dalam permohonan beliau untuk kemasukan kaveat bahawa defendan pertama adalah pihak atau privi kepada fraud. Plaintif tidak dalam apa-apa cara membabitkan defendan pertama sebagai pihak atau privi kepada fraud yang dikatakan tersebut. Plaintif telah gagal menyatakan jenis tuntutan beliau dan menjelaskan butir-butir fraud terhadap defendan pertama di dalam Borang 19B KTN (lihat ms 212C–D).

(7) Terdapatnya kelewatan oleh plaintif di dalam memasukkan kaveat dan memulakan guaman utama terhadap defendan pertama dan plaintif tidak menjelaskan tentang kelewatan tersebut (lihat ms 213C–D).]

Notes

For a case on extension of caveats, see 8 *Mallal's Digest* (4th Ed, 1998) para 2757.

Cases referred to

Kumpulan Sua Betong Sdn Bhd v Dataran Segar Sdn Bhd [1992] 1 MLJ 263 (refd)

Lloyds Bank Ltd v Bundy [1975] QB 326 (refd)

Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor [1995] 1 MLJ 719 (refd)

Paya Terubong Estate Sdn Bhd v Pusaka Warisan Sdn Bhd [1998] 2 MLJ 463 (refd)

Legislation referred to

Contract Act 1950 s 26 illustration (f)

Evidence Act 1950 s 85

National Land Code ss 323(2), 326, 340(2), (a), (3), Forms 14A, 19B, 19C

A

SY Lim (Tee Tan & Partners) for the plaintiff.
G Balasunderam (SC Thai & Bala Associates) for the first defendant.
Jazamuddin bin Hj Ahmad Nawawi, Federal Counsel

Cur Adv Vult

B **Zulkefli J**:

The application

This is an application by the plaintiff for the following orders:

C (a) that the private caveat entered by the plaintiff under instrument number 459/98 Jilid 6 Folio 44 registered on the lands known as EMR No 1899 Lot No 1795; EMR No 1890 Lot No 1796 (GM 815 Lot 1796); EMR No 1976 Lot No 1955 and EMR No 2039 Lot No 2029 ('the said lands') all situated in Mukim Kampong Buaia, District of Kuala Kangsar in the State of Perak be allowed to remain
D and extended until the disposal of the civil suit filed by the plaintiff against the first defendant or for a period of six years from the date of this order;

(b) the costs of this application be borne by the first and the second defendant.

E (c) other reliefs or further orders the court deems fit and proper.

Preliminary objection

At the outset of the hearing on a point of preliminary objection made by the learned counsel for the second defendant I make an order that the action
F taken by the plaintiff against the second defendant be struck out with no order as to costs. I am of the view that the District Land Administrator, the second defendant should not be made a party to the proceedings taken by the plaintiff against the first defendant. In this case the action taken by the second defendant to issue the notice under Form 19C of the National Land Code ['the NLC'] for the removal of the caveat is purely in compliance with
G the statutory provision of s 326 of the NLC and performing his statutory function. The second defendant in this case had rightly issued the said notice under Form 19C since there is an application made by the first defendant being the registered owner of the said lands for the removal of the private caveat. It is also incumbent upon the second defendant to put into
H effect any order thereafter made by the court in accordance with the provisions of the NLC.

Facts of the case

The salient facts of this case are as follows:

I The plaintiff was the previous registered owner of the said lands. The first defendant claimed that the plaintiff is believed to have given a power of attorney ('the PA') to one Karuppaya s/o Kannaya on 7 May 1987. Karuppaya as the purported donee of the PA sold the said lands to the first

defendant on 15 February 1988. The plaintiff now disputes the sale of the said lands to the first defendant and has caveated the said lands on 6 June 1998. The plaintiff has alleged fraud being committed by the first defendant and Karuppaya with regard to the sale transaction of the said lands effected on 15 February 1988.

The plaintiff's case

The plaintiff who has now resided in India and holder of an Indian passport in his affidavit in support of his application stated, inter alia, the following relevant facts:

(1) that the document of title to the said lands were kept in an almeirah steel which he verily believed were taken by one Karuppaya a/l Kannaya without his permission. The almeirah steel was kept in his house at No 43, Jalan Kangsar, Kuala Kangsar, Perak and the house was kept locked and all the keys are in his possession while he is staying in India.

(2) that he did not at all material time give any power of attorney to the said Karuppaya. The said PA was not executed by him and he verily believed that it was forged and used fraudulently to effect transfer of the said lands. A specimen of his signature was enclosed as exh 'B' to show evidence of consistency in his signature.

(3) that he had already taken civil suits against parties using the forged PA to sell his properties located in the District of Kuala Kangsar in the state of Perak. Besides the present action against the first defendant he had also filed a main suit citing the first defendant and Karuppaya as the defendants in Civil Suit No 22-76-98 filed before this court and that the court should preserve the status quo so that the said lands will not be disposed to third parties which would in fact render his main suit nugatory.

(4) that when he came down to Malaysia from India in June 1998 to attend the hearing of his other cases filed in court, he had made a land title search of the said lands and discovered that the said lands had also been transferred by Karuppaya using the said PA to the first defendant. He then lodged the caveat to protect his interest.

(5) that the size of the said lands was about 10 acres and the consideration paid by the first defendant for a sum of RM15,000 for the purchase of the said lands was much less when compared with the valuation of the said lands made by the Collector of Stamp Duties which was valued at RM28,400 for the purpose of payment of stamp duties on the instrument of transfer. This in itself showed that the consideration paid by the first defendant was not for a valuable consideration.

Case for the first defendant

The first defendant in his affidavit in reply stated, inter alia, the following relevant facts:

(1) that he had purchased the said lands from one Karuppaya a/l Kannaya for valuable consideration and had been the registered owner for the past 10 years.

(2) that he first met Karuppaya through two brokers and he did not know Karuppaya before he purchased the said lands. He had not met Karuppaya again since he purchased the said lands from him.

(3) that he verily believed that Karuppaya held a valid issue document of title and a power of attorney having found that the said PA was registered at the registry of the Ipoh High Court as PA No 2761/87.

(4) that he had seen a letter dated 27 December 1987 from an advocate and Notary Public in India named G Thangamuthu addressed to a firm of solicitor in Malaysia by the name of Ms Thiru, Mutalib & Bakarudin stating that the said PA was executed in the presence of the said G Thangamuthu and that G Thangamuthu had witnessed the same on 7 May 1987.

(5) that the signatures in the transfer form 14A of the NLC were attested before the Land Administrator of Kuala Kangsar. The Land Administrator had sighted all the relevant documents including the said PA.

(6) that the caveat lodged on the said lands are defective in that the reasons given in Form 19B of the NLC by the plaintiff do not reveal that the plaintiff has a caveatable interest. The plaintiff had also not stated the nature of his claim against the defendant in accordance with the provision of s 323(2) of the NLC and has further not spelt out the particulars of fraud alleged against the first defendant.

Findings of the court

As to the contention of the plaintiff that he had filed the main suit under Civil Suit No 22-76-98 against the first defendant and Karuppaya and that the court should preserve the status quo so that the said lands will not be disposed to third parties which would in fact render his main suit nugatory, I must strongly express here that there is no special provision in law that automatically permits a caveat to remain pending the disposal of the main suit. The plaintiff as the caveator must justify the continued maintenance of the caveat notwithstanding the filing of the main suit. The Supreme Court in the case of *Kumpulan Sua Betong Sdn Bhd v Dataran Segar Sdn Bhd* [1992] 1 MLJ 263 had made it clear by rightly stating that any claim to a caveatable interest and the right to lodge the caveat 'must be minutely inquired into in order to decide whether the caveat should remain on the register document of title or be removed' (per Jemuri Serjan CJ (Borneo) at p 270).

As to the principles to be applied and the procedure to be adopted to decide whether the caveat should remain or be removed I need only adopt and reproduce the guidelines enunciated by his lordship Gopal Sri Ram JCA when delivering the judgment of the Court of Appeal in the case of *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor* [1995] 1 MLJ 719

wherein his lordship, inter alia, spelt out that there are three stages through which an inquiry is to be undertaken by the court as follows:

(1) The first stage is the examination of the grounds expressed in the application for the caveat. If it appears that the grounds stated therein are insufficient in law to support a caveat the caveat must be removed without the necessity of going any further.

(2) The second stage is wherein the caveator must go on to show, in appropriate cases, that based on the affidavits filed his claim discloses a serious question meriting a trial.

(3) The third stage is arrived only after the first two hurdles have been crossed by the caveator. Here the question to be asked relates to the balance of justice or balance of convenience.

Applying the above stated principles and having studied the affidavits filed on behalf of the plaintiff and the first defendant, it is my finding that the plaintiff has failed to show that he has a caveatable interest on the said lands. I also find that the plaintiff has not disclosed serious questions meriting a trial. I am further of the view that the first defendant is a bona fide purchaser for value without notice nor knowledge of the fraud if any as alleged by the plaintiff. To support this contention it is necessary to refer to the provision of s 340(3) of the NLC which states as follows:

> (3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in subsection (2) —
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> (a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and
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> (b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested.
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> *Provided that nothing in this subsection shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchase.* (Emphasis added.)

Section 340(2) of the NLC on the other hand states as follows:

> (2) The title or interest of any such person or body shall not be indefeasible —
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> (a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or
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> (b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or
>
> (c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

On the evidence made available before the court, I find that the first defendant had acted most reasonably with due caution, prudence and diligence in the purchase of the said land. The first defendant had done all that a reasonable purchaser of property would have done in the purchase of the said lands. There was nothing more a reasonable purchaser could have

done to ascertain the efficacy, validity or authenticity of the PA in the given circumstances. The first defendant had purchased the said lands on the strength of a duly executed and registered power of attorney at the High Court Ipoh in PA No 2761/87. Before purchasing the said lands the first defendant had taken sight of a letter from the Notary Public in India who witnessed and authenticated the said PA addressed to a solicitor in Malaysia. The transfer document (Form 14A) was executed and attested by the Land Administrator, Kuala Kangsar with all parties present. On the enforceability and the applicability of the said PA No 2761/87 it is pertinent to refer to the provision of s 85 of the Evidence Act 1950 which states as follows:

> The court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a Notary Public or Commissioner for Oaths, or any Court, Judge, Magistrate or Consular office of [Malaysia] was so executed and authenticated.

Therefore in the circumstances of this case the court shall presume that the said PA executed before the Notary Public in India was so executed and authenticated. In the absence of any cogent evidence produced by the plaintiff to challenge the validity of the said PA other than a mere denial of the fact that he executed the said PA, I am of the view that the plaintiff has failed to rebut the said presumption under the provision of the said s 85 of the Evidence Act 1950. The plaintiff has alleged fraud in that the perpetrator of the fraud allegedly forged the signature of the plaintiff on a Power of Attorney. However there is absolutely nothing in the affidavit filed by the plaintiff to presumptively indicate the signature in the said PA is forged. The plaintiff had only enclosed a specimen of his signature as exh 'B' to the affidavit in support of his application to show evidence of consistency of his signature to be compared with the plaintiff alleged signature in the said PA. With respect I must state here that the court cannot determine the authenticity or otherwise of a signature by a mere comparison. This is the province of the expert evidence. I am of the view that there is a duty placed upon the plaintiff at this stage to produce some preliminary expert opinion or report to prima facie substantiate the loud allegation of forgery and fraud. The plaintiff on this point had failed to do so. That being the case the first defendant must be held to be a bona fide purchaser of the said lands for value without notice nor knowledge of the fraud as alleged by the plaintiff. Therefore the first defendant gets a good title to the said lands as he has been conferred with an indefeasible title by virtue of the proviso to s 340(3) of the NLC. I would venture to state here that the plaintiff's cause of action if any is not against the first defendant but against Karuppaya alone in damages as the allegation of forgery and fraud had been focussed solely against Karuppaya.

As regards the contention of the plaintiff that the sum of RM15,000 paid by the first defendant for the purchase of the said lands being much less than their actual value and that the consideration paid does not constitute a valuable consideration, I am of the view that it is rather that the court should not interfere with the bargain actually made by the parties. The fact

that a person pays 'too much' or 'too little' for a thing does not in itself affect the validity of the contract. If the parties consent to an agreement have been freely given such an agreement is a contract notwithstanding the inadequacy of the consideration (see s 26 illustration (f) of the Contract Act 1950). The general rule remains as aptly stated by Lord Dennings MR in the case of *Lloyds Bank Ltd v Bundy* [1975] QB 326 at p 336, inter alia, as follows:

> ... No bargain will be upset which is the result of the ordinary interplay of forces.

In the circumstances of the present case I am inclined to hold that the first defendant had entered into a valid contract with Karuppaya acting as the donee of the said PA for the purchase of the said lands notwithstanding the inadequacy of the consideration as alleged by the plaintiff.

As to the question of whether the plaintiff has a caveatable interest on the said lands and his allegation of fraud against the first defendant, I am of the view that by virtue of the provision of s 340(2)(a) of the NLC the plaintiff has to reveal in the grounds expressed in his application for the entry of the caveat that the first defendant 'was a party or privy' to the fraud. A close look at the grounds or nature of claim of the plaintiff for entering the caveat as stated in the Form 19B of the NLC and contained in the plaintiff's statutory declaration appended to the said Form 19B did not in anyway implicate the first defendant as a party or privy to the alleged fraud. In fact in the said statutory declaration appended to the said Form 19B of the NLC the plaintiff had only alleged against Karuppaya as the person who had committed the forgery and fraudulent acts which had caused him to suffer much loss and damages. It was further stated by the plaintiff in the said statutory declaration that by forgery and fraudulent act of Karuppaya the said lands had been transferred to the first defendant on or about 1988 and are still registered in the first defendant's name. Section 323(2) of the NLC states as follows:

> Any such person or body wishing to apply for the entry of such a caveat shall do so in Form 19B and such application shall be attested in accordance with the provisions of section 211 and shall state therein the nature of the claim on which his application is based, and whether the caveat is to be expressed to bind the land itself or a particular interest only.

It is my finding that the plaintiff has failed to state the nature of his claim and to spell out the particulars of fraud against the first defendant in the said Form 19B of the NLC. In para 5 of the statutory declaration appended to the said Form 19B the plaintiff had made the following statement:

> I intend to make further inquiries before commencing legal proceedings to have this property retransferred into my name.

I am of the view that the above mentioned statement by itself indicates that the plaintiff is unsure if he has any caveatable interest. The plaintiff has not satisfied the requirement of the provision of s 323(2) of the NLC nor the requirements of the principles set out in the *Luggage Distributors (M) Sdn Bhd*'s case. Therefore the grounds stated in the said Form 19B of the NLC are 'insufficient in law' to support a caveat.

Delay in the entry of the caveat and institution of the main suit

Apart from arriving at a decision that the plaintiff has failed to show that he has a caveatable interest in the said land and disclosing serious questions meriting a trial, it is also my finding that there has been a delay by the plaintiff in lodging the said caveat and in instituting the main suit against the first defendant. It is an undisputed fact that the first defendant became the registered owner of the said lands on 15 February 1988. The plaintiff caveated the said lands only on 6 June 1998 and filed the main suit under Civil Suit No 22-76-98 on 25 November 1998. It is also known that the plaintiff has instituted one other suit against another party unconnected with the present case in 1992 under Taiping High Court Civil Suit No 22-4-92 purportedly using the same alleged forged PA. The plaintiff in his affidavit has not explained the contumelious delay in the entry of the caveat and in the institution of the main suit against the first defendant. There has been a delay of about 10 years from the time of the purchase of the said lands by the first defendant on 15 February 1988 until the filing of the main suit by the plaintiff on 25 November 1998. Even if the Taiping High Court Civil Suit No 22-4-92 is to be taken into consideration the plaintiff has still not explained the six years delay in instituting the main suit on 25 November 1998. I am of the view that the first defendant as the registered owner of the said lands should not be denied and deprived from continuing to deal with the subject lands as it would be an affront to justice as no reasonable explanation whatsoever has been forthcoming from the plaintiff as to the delay (see the case of *Paya Terubong Estate Sdn Bhd v Pusaka Warisan Sdn Bhd* [1998] 2 MLJ 463). The delay of between 6-10 years in lodging the said caveat and in instituting the main suit against the first defendant in my view is an inordinate and inexcusable delay.

As regards the plaintiff's contention that he arrived in Malaysia after 17 years being away in India I find that the plaintiff has not stated specifically when he arrived in Malaysia. The plaintiff has not exhibited a copy of his passport to explain and show beyond doubt the period of time he was really absent from Malaysia. In the absence of such evidence it is highly suspect that the plaintiff could be away for so long outside Malaysia so as not to know at all what is happening to his landed properties. It should be noted that the first defendant as the registered owner of the said lands have been paying the yearly quit rent and assessment rate on the said properties for the last 10 years. To my mind the plaintiff as a once wealthy landed proprietor would surely have made arrangement for payment of the said yearly quit rents and assessment rates if at all he was to be away and out of the country for 17 years. A prudent and reasonable man would have discovered something amiss when the first defendant has been continuously paying the yearly charges on plaintiff's lands for the last 10 years. It should also be noted of the fact that the plaintiff has failed to lodge a police report in respect of the alleged fraud against the first defendant. The plaintiff has not explained why he has kept silent and not reported the matter to the police. It should be further noted of the fact that the plaintiff has also failed to lodge a report to the District Land Administrator with regard to his discovery of the loss of his land titles which he claimed he had kept in an

almeirah steel kept locked at his house in Kuala Kangsar when he left for India. It is my finding that the cumulative effect of all these factors would point to a conclusion that the plaintiff did not act with due diligence and prudence. If the plaintiff had done so he could and should reasonably have discovered the alleged fraud if any having taken place which he now claimed against the first defendant.

For the above stated reasons, I thereby dismiss the plaintiff's application with costs and would order that the private caveat be removed forthwith.

Application dismissed.

Reported by Jafisah Jaafar